

**IN THE MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

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**COMPLETE TITLE OF CASE**

50 PLUS PHARMACY, et al.,

Respondents,

v.

CHOICE PHARMACY SYSTEMS, LLC, et al.,

Appellants.

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**DOCKET NUMBER WD77879**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**DATE:** March 31, 2015

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**APPEAL FROM**

The Circuit Court of Jackson County, Missouri  
The Honorable Kenneth R. Garrett, III, Judge

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**JUDGES**

Division I: Martin, P.J., and Newton and Pfeiffer, JJ.

CONCURRING.

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**ATTORNEYS**

George E. Kapke  
Lee's Summit, MO

Attorney for Respondents,

Eric E. Packel, Latrice N. McDowell, and Jon R. Dedon  
Kansas City, MO

Attorneys for Appellants.

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## MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

**50 PLUS PHARMACY, et al.,**

**Respondents,**

**v.**

**CHOICE PHARMACY SYSTEMS, LLC,  
et al.,**

**Appellants.**

**OPINION FILED:  
March 31, 2015**

**WD77879**

**Jackson County**

**Before Division I Judges:**

Cynthia L. Martin, Presiding Judge, and Thomas H.  
Newton and Mark D. Pfeiffer, Judges

Choice Pharmacy Systems, LLC; Choice Pharmacy Services, LLC d/b/a Partners Pharmacy; and Kathy Kopp appeal the ruling of the Circuit Court of Jackson County, Missouri, denying their motion to compel arbitration in the underlying litigation against them filed by 50 Plus Pharmacy, Inc. and Kathy Browne. On appeal, appellant buyers of a pharmacy business claim that the circuit court erred in ruling that the dispute between them and the selling parties was not required to be submitted to arbitration and that the issue of arbitrability of the dispute should have been, in the first instance, decided by the arbitrator and not by the court.

**AFFIRMED.**

**Division I holds:**

While parties may agree to submit matters to arbitration, including the gateway issue of who will decide whether a dispute is arbitrable, delegation of gateway arbitrability questions must be clear and unmistakable in order to remove consideration of the matter from the courts. In this case, a clause providing for arbitration of a narrow class of disputes governed by an agreement subordinate to the asset purchase agreement between the parties, which stated that any arbitration of such issues would be in accordance with the rules of the American Arbitration Association, did not sufficiently clearly and unmistakably establish the parties' intent to submit questions of arbitrability to an arbitrator instead of to the courts, whose jurisdiction was broadly

asserted in the asset purchase agreement. Moreover, the court properly concluded that the narrow arbitration clause did not compel arbitration of the parties' disputes where there was no evidence in the record that the buyers of the business had completed actions triggering the parties' obligation to arbitrate and where at least some of the sellers' claims clearly fell outside of the arbitration provision.

**Opinion by: Mark D. Pfeiffer, Judge**

March 31, 2015

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